



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XW006

Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS has determined that seventeen exempted fishing permit (EFP) applications warrant further consideration, and requests public comment on the applications. All EFP applicants request an exemption from a prohibition on the use of unauthorized gear to harvest highly migratory species (HMS) under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP), to test the effects and efficacy of using deep-set buoy gear (DSBG), deep-set linked buoy gear (DSLBG), or modified deep-set linked buoy gear set at night, to harvest swordfish and other HMS off of the U.S. West Coast.

DATES: Comments must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0079, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0079, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Attn: Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS- 2019-0079” in the comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Chris Fanning, NMFS West Coast Region, 562-980-4198.

SUPPLEMENTARY INFORMATION:

DSBG fishing trials have occurred for the past eight years (2011-2015, research years; 2015-2019, EFP years) in the U.S. West Coast Exclusive Economic Zone (EEZ) off California. Data collected from these fishing activities have demonstrated DSBG to achieve about a 95 percent marketable catch composition (swordfish, opah, tunas, and sharks). Non-marketable species catch rates have remained low and most non-marketable catch are released alive. Due to DSBG being actively tended, strikes are detected within minutes of a catch on the line. As a result, all catches can be tended quickly, with catch brought onboard the vessel in good condition.

To date, DSBG has had four interactions with protected species. Three interactions were with elephant seals, which were not seriously injured and were released alive due to the strike detection and quick tending of the gear. These species are protected by the Marine Mammal

Protection Act, but are not listed as threatened or endangered under the Endangered Species Act (ESA).

On August 4, 2018, a loggerhead sea turtle was observed entangled in the surface buoy lines of a vessel fishing under an EFP to test standard DSBG. The sea turtle was brought on board, disentangled, and released back to the sea in a lively, uninjured condition. Based on analysis of the incident, NMFS West Coast Region amended the applicable Terms and Conditions to require the following attributes, to minimize the likelihood of future sea turtle entanglements:

1. The surface buoy flotation and strike detection array must be a streamlined inline configuration, with no loops or hanging material, and no more than 6 feet between adjacent buoys, to reduce entanglement potential.

2. The surface buoy flotation and strike detection array must consist of a >40lb flotation non-compressible hard ball, a minimum six pound flotation inline-float, and a sub-surface inline-float, all connected in-line with a minimum of 3/8 inch diameter line, and no more than six feet between adjacent buoys.

3. Use of buoy tether attachments (*e.g.*, non-streamlined gear with loops, nooks, and dangling components) is prohibited.

DSLBG trials have occurred since 2015 and have produced similar results to standard DSBG activities. Swordfish and other marketable species have represented about 97 percent of the catch with very similar catch composition to DSBG. Non-marketable species are released alive due to quick DSLBG strike detection and active gear tending. To date, there have been no protected species interactions with DSLBG in either EFP fishing or research trials.

At the June 2019 Pacific Fishery Management Council (Council) meeting, the Council received a total of seventeen additional EFP applications for review. Based on recommendations from the Council's HMS Management Team, the Council recommended that NMFS consider issuing EFPs to authorize use of DSBG and/or DSLBG for sixteen of the applications (see Table

In addition, one application for one vessel to fish modified linked buoy gear at night, was preliminarily approved by the Council, with a final recommendation scheduled for the September 2019 Council meeting. The gear configuration in this application differs from previously approved EFPs in that the applicants propose fishing at night, at a depth of around 300 feet. The array of surface buoys has also been modified to include a green light to aid in the monitoring, strike detection, and retrieval of gear at night. At previous Council meetings, the Pflieger Institute of Environmental Research (PIER) included a brief summary of DSBG gear trials conducted at night. These sets were fished at a depth of less than 100 ft and resulted in a large proportion of blue shark catch. Due to this high rate of interactions with blue sharks, PIER ceased night fishing with DSBG. Mr. Perez and Mr. Carson believe that fishing at a greater depth at night will increase catch of marketable species, including swordfish during their diurnal migration to and from depth, while greatly reducing the occurrence of non-marketable species interactions. The Council's HMS Management Team (HMSMT) agreed (https://www.pcouncil.org/wp-content/uploads/2019/06/J5a_Sup_HMSMT_Rpt1_JUN2019BB.pdf) that this theory is worth allowing a single vessel, operated by a fisherman with several years of DSBG fishing experience under both PIER and his own EFP, to test this new approach.

Table 1.

Applicant	Applications Recommended to NMFS
Barker / McCaffrey	<u>Agenda Item J.5, Attachment 4</u> : DSBG EFP Application from Jordan McCaffrey
Bateman	<u>Agenda Item J.5, Attachment 15</u> : DSBG EFP Application from John Bateman
Burke	<u>Agenda Item J.5, Attachment 14</u> : DSBG EFP Application from Sean Burke
Dirkse	<u>Agenda Item J.5, Attachment 7</u> : DSBG EFP Application from Douglas and Lucas Dirkse
Doljanin	<u>Agenda Item J.5, Attachment 19</u> : DSBG EFP Application from John Doljanin
Estrada	<u>Agenda Item J.5, Attachment 12</u> : DSBG EFP Application from Antonio Estrada
Flynn	<u>Agenda Item J.5, Attachment 10</u> : DSBG EFP Application from Michael Flynn
Gerritsen	<u>Agenda Item J.5, Attachment 3</u> : DSBG EFP Application from J.J Gerritsen
Green	<u>Agenda Item J.5, Attachment 13</u> : DSBG EFP Application from Anthony Green
Grey / Gibbs	<u>Agenda Item J.5, Attachment 9</u> : DSBG EFP Application from John Gibbs and Anthony Grey
Guglielmo	<u>Agenda Item J.5, Attachment 8</u> : DSBG EFP Application from Nicholas Guglielmo
Kirkpatrick	<u>Agenda Item J.5, Attachment 18</u> : DSBG EFP Application from John Kirkpatrick
Lins	<u>Agenda Item J.5, Attachment 2</u> : DSBG EFP Application from Nathan Lins
Marvin	<u>Agenda Item J.5, Attachment 16</u> : DSBG EFP Application from Brock Marvin
Roach	<u>Agenda Item J.5, Attachment 6</u> : DSBG EFP Application from Zachary Roach
Stephens	<u>Agenda Item J.5, Attachment 11</u> : DSBG EFP Application from Dave Stephens

Perez / Carson	<p>Application preliminarily approved for Council recommendation:</p> <p><u>Agenda Item J.5, Attachment 17</u>: DSBG EFP Application from Nathan Perez and Thomas Carson</p>
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All applications are available at the Council June 2019 meeting briefing book website, under agenda item J.5: <https://www.pcouncil.org/resources/archives/briefing-books/june-2019-briefing-book/#hmsJun2019>.

The Council also recommended that NMFS prioritize issuance of these June 2019 EFP applications over previously-approved EFP applications that have not yet been issued, that NMFS extend currently issued DSBG EFPs through 2020, and that NMFS consider any EFP applications previously approved by the Council but not issued by December 31, 2019, due to inaction or abandoned by the applicant, as ineligible for issuance.

NMFS is requesting public comment on the seventeen DSBG/DSLBG EFP applications recommended for consideration by the Council. If all applications are approved, the EFPs would allow up to eighteen vessels to fish with DSBG, four vessels to fish with DSLBG, and one vessel to fish modified linked buoy gear at night, in the U.S. West Coast EEZ. Aside from the exemption described above, vessels fishing under an EFP would be subject to all HMS FMP requirements implemented in NMFS regulations at 50 CFR 660, including measures to protect sea turtles, marine mammals, and seabirds. For up-to-date information on HMS EFPs, please visit NMFS West Coast Region's "Highly Migratory Species – Exempted Fishing Permits" Web page: <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/highly-migratory-species-exempted-fishing-permits>.

NMFS will consider all public comments submitted in response to this Federal Register Notice prior to issuance of any EFP. Additionally, NMFS will analyze the effects of issuing

EFPs in accordance with the National Environmental Policy Act and NOAA's Administrative Order 216-6, as well as compliance with other applicable laws, including Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*), which requires the agency to consider whether the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2019.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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